

**E. I. DuPont de Nemours & Co. and United Workers, Inc. Case 5-CA-14540**

27 August 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER**

On 25 March 1983 Administrative Law Judge Peter E. Donnelly issued the attached decision. The Respondent filed exceptions and a copy of its brief to the judge. The Charging Party filed cross-exceptions and a supporting brief and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, E. I. DuPont de Nemours & Co., Waynesboro, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

**DECISION**

**STATEMENT OF THE CASE**

PETER E. DONNELLY, Administrative Law Judge. The charge herein was filed by United Workers, Inc.,<sup>1</sup> (Union or Charging Party) on July 22, 1982. A complaint thereon was issued on August 31, 1982, alleging that E. I. DuPont de Nemours & Co. (Employer or Respondent) violated Section 8(a)(1) and (5) of the Act by refusing to furnish certain information concerning the cost of major medical health insurance premiums. An answer thereto was timely filed by Respondent. Pursuant to notice, a hearing was held before me at Waynesboro, Virginia, on November 10, 1982. Briefs have been timely filed by Respondent, Charging Party, and the General Counsel which have been duly considered.

**FINDINGS OF FACT**

**I. THE ALLEGED UNFAIR LABOR PRACTICE**

Respondent employs some 2000 employees at its fiber-producing plant in Waynesboro, Virginia. The collective-bargaining relationship between the Union and Respondent goes back some 37 years. The Union presently represents in separate units under separate contracts about 1500 employees. The two units represented are the pro-

duction and maintenance employees and the clerical, office, and technical employees.

Both contracts contain identical provisions dealing with hospital and medical-surgical coverage with the Blue Cross of Virginia and Blue Shield of Virginia<sup>2</sup> which provides that Respondent will provide basic hospital and medical-surgical benefits, as set out in the contract, and further that major medical coverage will be available at the option of the employee, and at the expense of the employee, by way of a payroll deduction of the premium.<sup>3</sup>

Sometime prior to June 11, 1981, Respondent was advised by Blue Cross/Blue Shield that a premium increase for major medical coverage would be necessary to provide the same coverage for the contract year beginning August 1, 1981. At that time, Respondent advanced four options, generally providing various coverages and deductibles for various premium amounts.<sup>4</sup>

On June 11, 1981, a meeting was held between representatives of the Union and Respondent to consider these four proposals.

Respondent and the Union stipulated that Respondent's written minutes of this meeting, as well as those of other meetings held on June 16, 24, and 28 all in 1982, and distributed to the Union are true and accurate accounts of those meetings. The four options, as they appear in the minutes of the June 11, 1981 meeting, read:

Option #1—Family premium from \$6.34 to \$13.18. Remain community rated. Retain present \$100 deductible.

Option #2—Family premium from \$6.34 to \$10.30. Increase deductible from \$100/individual,

<sup>2</sup> Since April 1, 1982, Blue Cross/Blue Shield of Virginia has been a single corporate entity, herein called Blue Cross/Blue Shield.

<sup>3</sup> The relevant portions of both contracts (art. XXVIII of the production and maintenance contract and art. XV of the clerical and office technical employees contract) read:

**Hospital and Medical-Surgical**

**Coverage**

Section 2. Basic Hospital and medical-surgical coverage shall be that provided by the Blue Cross of Virginia and the Blue Shield of Virginia in their Group Hospital-Medical Surgical Contract No. X-4202 with the COMPANY.

Section 3. If an employee enrolls for the additional coverage offered jointly by the Blue Cross of Virginia and the Blue Shield of Virginia under their Group Major Medical Service Contract, and authorizes the deduction from his wages of the amount of the premium for the additional coverage, the COMPANY will deduct that amount from his wages. Former employees who have been terminated for lack of work for no more than six (6) months beyond the end of the month in which termination occurred may qualify for the additional coverage if they enroll for such coverage and pay the premium. No portion of the premium for such additional coverage is to be paid by the COMPANY.

<sup>4</sup> The premium rate is reviewed annually by Blue Cross/Blue Shield and normally increased. In June of each year representatives of Respondent meet with Blue Cross/Blue Shield representatives in Richmond, Virginia, where they examine certain data to determine Blue Cross/Blue Shield's reasonableness in requesting the increases. In addition, various rate projections and benefits levels are discussed and these options are made available to Respondent. If benefits remained the same, there is usually an increase in the premium which is not negotiable. Respondent does have the option of terminating the contract upon 60 days' written notice.

<sup>1</sup> The Union's name appears as amended at the hearing.

\$200/family to \$200/individual, \$400/family. Remain community rated. Just as with auto or home insurance, raising the deductible lowers the premium. Also, the higher deductible puts the greater burden where it belongs, on those who use it most.

Community rated means our Major Medical claims go into a pool for our district (20 in Virginia) with about 300,000 other contracts. If our experience is worse than the average of the pool (which it is), we benefit through lower premiums. If it is better we lose.

Option #3—Family premiums from \$6.34 to \$14.06. Retain \$100 deductible but go Waynesboro Plant experience rated. Same as OPTION #1 but experience vs. community rated. Higher premium cost shows we're a bad risk vs. the other contract holders.

Option #4—Family premium from \$6.34 to \$X - a negotiated rate. Go to Waynesboro Plant experience rated. This option would be attractive short term but could be a real problem later because premiums would have to be increased—perhaps drastically—to make up any losses or shortfalls during the low premium period. Based upon what the BC/BS people are telling us and we've checked their figures, we need to act now as it will cost us even more out-of-pocket later on.

Management suggested the second option, providing for an increased deductible and a retention of the community-rated premium over the experience-rated premium.

Management spokesman R. R. Barker also observed that major medical premiums had increased at other plant locations. The minutes read:

Waynesboro Du Pont Major Medical subscribers are not the only ones feeling the increases. BS/BC is working with virtually all subscribers on rate increases as a result of rising health care costs across the country. Within Du Pont, Kinston's Major Medical cost went from \$9.50 to \$14.55/family 2/1/82. Old Hickory is at \$14.05/family with a \$300 deductible. Martinsville just went from \$9.48 to \$15.38/family and retained the \$100 deductible. Richmond, which has basically the same coverage we do, is still considering their situation.

As the minutes also reflect, Barker summarized management's position by stating that "the increased costs are real, a premium increase is in order and that on balance Management feels that the increased deductible option [Option #2] is the most reasonable." The Union agreed and the increase was put into effect.

Approximately a year later, on June 16, 1982,<sup>5</sup> another union-management meeting was held, at the request of Respondent, to discuss major medical premiums. At this meeting Respondent presented new rates which Blue Cross/Blue Shield had determined were necessary to maintain the existing benefits level. Respondent's spokes-

man, Walker Norford, announced that Blue Cross/Blue Shield had "established a new corporate policy whereby contract with more than 2,000 subscribers will be experience-rated rather than community-rated. This will be a change in our current Major Medical contract which covers both employees and Pensioners." However, Norford stated that experience rated was actually cheaper than community rated.<sup>6</sup> During this meeting, Union President Alfred Berry said that he understood that Wayne-Tex Company, another Waynesboro corporation, had a \$50 deductible and said that he would like to have information as to whom the carrier was and what their premiums were. Norford said that management would check on it. Berry also asked for the premiums on major medical at all of Respondent's plants in Virginia. Norford agreed to consider this request and respond later in the day.

After a recess, Norford, directing himself to the Union's latter request, stated that such information was not relevant to Waynesboro. As the minutes of that meeting disclose:

Following a break, Mr. Norford commented on the Union's request for rates at other Du Pont plants. He pointed out that such information is not relevant to the discussion of a necessary premium increase at Waynesboro. Factors that create plant-to-plant differences are:

- Contract vary from plant to plant
- Contract periods vary from plant to plant
- Age of the Plant
- Number and age of pensioners/survivors
- Average age of employees
- Hospital, medical, surgical cost in that area
- Cost will vary year to year

Berry stated that in view of Respondent's position, the Union would need some time to consider the matter.

On June 22, Berry sent Norford the following letter:

We are writing regarding our meeting on June 16 pertaining to the proposed Major Medical premium increase. In this meeting we requested the premium cost of the other four Virginia DuPont plants, which we thought was very reasonable. We were refused this information at this meeting, but to be able to effectively represent our members, we must have the following:

Information on the same plants we were furnished in 1981.

Information on the other four plants in Virginia.

Information on all DuPont plants that have Major Medical Insurance.

Copy of Major Medical Contract between Blue Cross and DuPont.

<sup>5</sup> All dates refer to 1982 unless otherwise indicated.

<sup>6</sup> This was just opposite of the representation made by Barker at the June 11, 1981 meeting.

Copy of Blue Cross/Blue Shield basic contract between Blue Cross and DuPont.

As stated above, this information is very much needed to enable us to do a respectable job for our constituents. We must have better Management cooperation and good faith bargaining to improve the bargaining atmosphere at this point.

We are requesting a meeting at your earliest convenience to discuss the above.

On June 24, another meeting was held between representatives of the Union and Respondent for the purpose of, *inter alia*, discussing the request for information made by the Union in the June 22 letter. By way of clarification, Berry defined the "Virginia" plants as the two plants in Richmond, one in Martinsville, and one in Front Royal, and that the request for information meant the premiums paid for major medical at "other" locations (besides Virginia) as well as the number of employees employed at those locations since Blue Cross/Blue Shield was now requiring all plants with 2000 or more subscribers to become experienced rated as to premiums. Berry said that they needed this information to assist the Union in developing counterproposals. Norford maintained that many factors at the other plants concerning type of contract, utilization, contract periods, age of work force, number of pensioners/survivors and medical costs for various areas upon which the premiums were based, varied at the different locations and that the information would not be relevant to Waynesboro since the Waynesboro premium is based solely on the experience of Waynesboro employees and pensioners/survivors. Norford stated, "In fact, information concerning premiums at various locations could confuse rather than clarify questions raised by employees." Berry pointed out that the premium information had been provided in 1981, as reflected in the minutes of the June 11, 1981 meeting, and Norford replied that the information was not provided pursuant to request, but presented by Respondent to emphasize the point that premium costs were increasing throughout the country.

Again, with respect to the relevancy of the information requested by the Union, the minutes of the June 24 meeting states:

Mr. Norford further states he did not understand how the UWI's request for premiums and size of plants could have any relevancy that would contribute to preparing a counterproposal. As previously stated, management is willing to consider any counter-proposal the Union might present such as an increase or decrease of the deductible amount, etc. Mr. Berry said they need this information before making a counterproposal. He understands there are Major Medical contracts that cover 100% rather than 80%. In the past they have gotten information about other plants and feel this request is reasonable.

Berry also requested a copy of the legal contracts for hospital and medical-surgical coverage between Respondent and Blue Cross/Blue Shield.<sup>7</sup>

Norford advised the Union that Respondent would answer the Union's letter of June 22 at a later date.

The next and last meeting was held on June 28 at Respondent's request to respond to the Union's June 22 letter. Upon inquiry by Norford, the Union said that the information sought in item three of the June 22 letter subsumed the information sought in items one and two and was requesting major medical premium rates and number of covered employees at all of Respondent's other plants. Norford advised the Union that these premium rates would not be provided since first, Respondent at Waynesboro did not have them, and second, they were not relevant to premium rates at Waynesboro since the various factors which determine premium costs vary from plant-to-plant and have no bearing on the premium costs at the Waynesboro plant.

Norford also stated that the premium's increase needed to be communicated to the employees because the Blue Cross/Blue Shield contract year began on August 1 and the payroll deduction would have to begin in July in order to continue current coverage.

Berry objected to Respondent's position not to furnish the information requested since he felt that Respondent was failing to follow past practice and policy because premium rate information as to some of Respondent's other plants was provided in 1981. Norford responded that the information being sought was not relevant and that it was provided in 1981 only to emphasize increased costs for major premiums, and not to compare rates.

The premium rates for major medical insurance were raised effective August 1 as shown in the minutes of the meeting of June 16, with payroll deductions beginning in July 1982.

## II. ANALYSIS AND CONCLUSION

When a union requests information from an employer for the purpose of enabling it to discharge its bargaining obligation on behalf of the unit employees, the employer is obliged as a matter of law to provide such information. Obviously an employer is not obliged to furnish any information the union may request, but the Board has determined that such information as is relevant and reasonably necessary for the Union to discharge its bargaining obligation on behalf of the employees it represents must be provided. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

With respect to the instant case, Respondent first takes the position that the collective-bargaining agreement should be interpreted as vesting in Respondent the right to pass on the premium increases to unit employees without bargaining with the Union. While Respondent concedes that it would be required to bargain concerning "coverage," it contends that it was not obliged to bargain over premium increases, and that its only responsi-

<sup>7</sup> Apparently this information was provided and it is not an issue in this case.

bility was to inform the Union that the premium increases were to take effect. I cannot agree.

There is nothing in Respondent's contractual right to deduct the amount of major medical premiums from wages under a payroll deduction authorization which can be construed as giving Respondent a unilateral right to pass on a premium increase without bargaining. The matter has not been "pre-bargained" as the Respondent contends. This is a gratuitous and unsupported interpretation of the contract.

Nor can it be said that the amount of the premiums are matters outside of the control of Respondent which renders useless any discussion with the Union. The record makes it clear that representatives of Respondent and Blue Cross/Blue Shield meet annually prior to the new contract period to discuss various matters, including the claims experience of the prior year, the reasonableness of the Respondent's Blue Cross/Blue Shield projections, and the various factors used to determine them. They also discuss benefit modifications, including increased deductibles, which are evaluated and priced. It is also conceivable that if the premium options made available by Blue Cross/Blue Shield were unreasonable, Respondent could terminate the coverage with Blue Cross/Blue Shield and obtain coverage elsewhere.

Although Respondent contends that in the past increased major medical premiums were not negotiated, but the Union merely "notified," this contention is not supported by the record. A review of this record shows that there were negotiations on the various options and subsequently agreement as to the major medical premium for 1981. Further negotiations on these matters took place again in 1982 until Respondent refused to provide the information which gave rise to the issuance of the complaint herein.

In short, Respondent was obliged to negotiate with the Union over the matter of increased premiums for major medical coverage for the units' employees. *Nestle Co.*, 238 NLRB 92 (1978).

However, the larger question presented herein is whether Respondent was required to furnish major medical premium information as to its other plants in the nation.

In these circumstances the test as to relevance and reasonable necessity still applies as to the information being sought, but the seeker of the information has the burden of showing, with more precision, the relevance and necessity. Respondent contends that since major medical premiums at Waynesboro are based on experience-rate criteria limited solely to those employees, premium costs at other Respondent plants utilizing different criteria in arriving at the premium cost are not relevant to the matter of premium cost at Waynesboro. This is essentially an oversimplification of the issue. It would appear relevant to the Union's position to determine if other Respondent plants with Blue Cross/Blue Shield plans covering more than 2000 employees are also experienced-rated. Such comparisons might lead to modification in the coverage at the Waynesboro plant or perhaps negotiation with a view toward a change in insurance coverage.

Also, even assuming that the premium-cost information is not meaningful in terms of its value to the Union in negotiating major medical premiums for the unit employees, the value of the information to the Union must not be confused with its relevance to the matter being negotiated. The fact that the Union did not request information concerning the underlying criteria used in determining major medical premiums at Respondent's other plants does not make the requested information irrelevant; insufficient perhaps, in terms of its value to the Union, but not irrelevant. The fact that more or other information may be necessary to give meaning to the information sought does not make that information irrelevant. Whether or not meaningful comparisons can be made between the plants based on premium cost does not privilege Respondent to withhold the information. *E. I. Du Pont & Co.*, 264 NLRB 48 (1982).<sup>8</sup>

With respect to Respondent's contention that the matter should be left for resolution of the grievance procedures of the contract, it is clear that the issue to be resolved is whether or not Respondent is obligated under the National Labor Relations Act to provide certain information to the Union as necessary and relevant to the Union in representing the unit employees. It is not a question of interpreting the provisions of the existing contract. Nor has any grievance been filed as to this dispute. Accordingly, any deferral of the matter pursuant to Board law is inappropriate.

## II. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations as described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## III. THE REMEDY

The Union argues that Respondent also violated Section 8(a)(5) of the Act by unilaterally instructing Blue Cross/Blue Shield to implement an increase in major medical premiums without the Union's agreement and that a restoration of the status quo requires that Respondent be ordered to pay to each employee the amount of all moneys paid for that insurance from the time that Respondent unlawfully allowed the increases to take effect. Such relief is not appropriate.

First, in order to afford the relief sought by the Union, an unfair labor practice finding as to the allegation must be made. This contention of unlawful unilateral action by Respondent is a separate and distinct allegation, not alleged in the complaint and thus no findings thereon are made herein. The General Counsel has exclusive authority with respect to the allegations of the complaint. Re-

<sup>8</sup> Nor is the requested information unavailable to Respondent. While the Waynesboro plant of Respondent may not have the information at that location, it would not appear to be unduly burdensome to obtain since the information pertains only to Respondent's own plants.

spondent may not, sua sponte, in its brief, amend the complaint to allege unfair labor practice violations not alleged by the General Counsel.

Second, Respondent contends that the issue was fully litigated and closely related to the "heart" of the complaint. I disagree. As noted above, it is a conceptually distinct type of violation. Nor can I conclude that the matter was fully litigated at the hearing. While it appears that the major medical premiums were increased, the circumstances of the implementation of the increases were not fully litigated. According, I make no findings on the increase as an unlawful unilateral change in violation of Section 8(a)(5) of the Act.

However, having found that Respondent has engaged in certain unfair labor practices I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall recommend that it be required to furnish certain information to the Union which information is necessary and relevant to the Union's administration of its statutory obligation as collective-bargaining representative of the unit employees.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute units appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Unit 1. All hourly wage roll employees of the Waynesboro, Virginia Plant including the Benger Laboratory in Waynesboro, VA., but excluding all office clerical, technical and professional salaried employees, guards, supervisory trainees and supervisors as defined in the Act.

Unit 2. All salary employees of the Waynesboro, Virginia Plant except for employees exempt under the Fair Labor Standards Act; secretaries or stenographers and their relief assigned to the Plant Manager and his Staff, the Benger Laboratory Director and his Staff, the Technical Superintendent, Medical Supervisor, Personnel Supervisor, Employment Supervisor, Industrial Relations Supervisor, Safety Supervisor, Industrial Engineering Supervisor, Planning Supervisor, Industrial Engineering Group Supervisor, Salary Records Clerks, Plant Guards, Supervisory Trainees and all supervisors.

4. At all times material herein, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees in the respective units described above.

5. By refusing to furnish the Union with the requested information concerning major medical premium rates and numbers of covered employees at all of Respondent's other plants, Respondent has refused to bargain in good faith with the Union and has interfered with, restrained, and coerced its employees in the exercise of their rights in Section 7 of the Act, thereby engaging in unfair labor

practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act and Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>9</sup>

#### ORDER

The Respondent, E. I. DuPont de Nemours & Co., Waynesboro, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to furnish the United Workers, Inc., with information concerning major medical premium rates and number of covered employees at all of Respondent's plants.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Furnish the United Workers, Inc. with information concerning major medical premium rates and number of covered employees at all of Respondent's plants.

(b) Post at its plant in Waynesboro, Virginia, copies of the attached notice marked "Appendix."<sup>10</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

<sup>9</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>10</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively and in good faith with United Workers, Inc., by refusing to furnish said Union with information necessary and relevant to the Union's performance of its collective-bargaining functions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed under Section 7 of the Act.

WE WILL furnish the Union with information concerning major medical premium rates and number of covered employees at all of the Respondent's plants.

E. I. DUPONT DE NEMOURS & CO.